

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BARBARA STUART ROBINSON,

Plaintiff,

v.

PIERCE COUNTY,

Defendant.

CASE NO. 3:23-cv-05416-DGE

ORDER ON APPLICATION TO
PROCEED IFP (DKT. NO. 9)

I. INTRODUCTION

This matter comes before the Court on Plaintiff's application to proceed In Forma Pauperis ("IFP") (Dkt. No. 9) in her Ninth Circuit appeal of this Court's order adopting a Report and Recommendation (Dkt. No. 6).

II. BACKGROUND

On May 8, 2023, Plaintiff filed an application to proceed in forma pauperis (IFP) and a proposed complaint. (Dkt. No. 1.) On May 18, 2023, United States Magistrate Judge David W. Christel issued a Report and Recommendation ("R&R"), recommending "the proposed

1 complaint be dismissed without prejudice for failure to state a claim, the Application to Proceed
2 IFP (Dkt. 1) be denied, and this case be closed.” On August 2, 2023, this court, adopting the
3 R&R and addressing Plaintiff’s objections, dismissed the proposed complaint without prejudice
4 and denied the IFP application. (Dkt. No. 6.)

5 On August 8, 2023, Plaintiff appealed this Court’s order denying her IFP application to
6 the Ninth Circuit. (Dkt. No. 7.) She filed an IFP application for her appeal, which the Ninth
7 Circuit clerk referred to this court. (Dkt. No. 9.)

8 III. DISCUSSION

9 The Federal Rules of Appellate Procedure provide that “a party in a district-court action
10 who desires to appeal in forma pauperis must file a motion in the district court.” Fed. R. App. P.
11 24(a)(1). Plaintiff, in accordance with Rule 24, filed a motion with Ninth Circuit using Form 4.
12 (Dkt. No. 9.) Form 4 states that the “the court may grant a motion to proceed in forma pauperis
13 if you show that you cannot pay the filing fees and you have a non-frivolous legal issue on
14 appeal.” UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, Form 4, *Motion and*
15 *Affidavit for Permission to Proceed In Forma Pauperis* (emphasis added.)

16 The district court may permit indigent litigants to proceed IFP upon completion of a
17 proper affidavit of indigency. *See* 28 U.S.C. §1915(a). However, the court has broad discretion
18 in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), cert.
19 denied 375 U.S. 845 (1963). Plaintiff indicates her average monthly income is \$1875, through
20 new employment at Amazon and through self-employment. (Dkt. No. 9 at 2.) She indicates she
21 owns a property valued at \$2400 and a car valued at \$5000. She lists her monthly expenses as
22 \$3213 and indicates that she has no cash on hand. Plaintiff’s consistent income gives the Court
23 pause on her indigency.

1 Plaintiff's possible lack of indigency notwithstanding, the Court finds Plaintiff's legal
2 issue on appeal is frivolous. Plaintiff alleges the Court "denied the Plaintiff's/Appellant's
3 motion for IFP and denied Plaintiff to proceed based on prejudice and erred facts and law of
4 Plaintiff's claims and relief." (Dkt. No. 9 at 1 (cleaned up).) Plaintiff states the Court made a
5 "falsification of fact that Plaintiff's complaint claimed injury or should have claimed an injury
6 when in fact the Plaintiff's complaint was injunction relief." (*Id.* (cleaned up).) While she is
7 correct that her claims in the Proposed Complaint were for injunctive relief (Dkt. No. 1-1 at 5),
8 even claims for injunctive relief require an injury in fact. *See Summers v. Earth Island Inst.*, 555
9 U.S. 488, 493 (2009) (noting a plaintiff "bears the burden of showing that he has standing for
10 each form of relief sought"). And, as stated in the R&R and in the Court's order adopting the
11 R&R (*see* Dkt. Nos. 4 at 3; 6 at 2), the statute Plaintiff cited as support for her claims—the
12 Longshore and Harbor Workers' Compensation Act—is inapplicable. Thus, because Plaintiff's
13 appeal is based on an unsupported claim, it is frivolous.

14 IV. CONCLUSION

15 Accordingly, the Court DENIES Plaintiff's motion to proceed IFP on appeal.

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17 Dated this 23rd day of August 2023.

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David G. Estudillo
United States District Judge